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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Carriage of the Transmissions of)
Digital Television Broadcast Stations) CS Docket No. 98-120
)
Amendment to Part 76)
of the Commission's Rules)

REPLY COMMENTS

The Wireless Communications Association International, Inc. ("WCA"), by its attorneys, hereby submits its reply comments with respect to the Commission's *Notice of Proposed Rulemaking* ("NPRM") in the above-captioned proceeding.

In its initial comments, WCA voiced a strong and unequivocal objection to any elimination of the Commission's ban on exclusive retransmission consent agreements (47 C.F.R. § 76.64(m)).^{1/} It is beyond dispute that incumbent cable operators retain substantial control over distribution of programming in local markets, and that as a result broadcasters are willing to surrender exclusivity to incumbent cable operators as a *quid pro quo* for carriage of local broadcast signals.^{2/} Indeed, NBC, Fox and CBS have already surrendered exclusivity with respect to the MSNBC, FX and Eye on People cable networks in exchange

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^{1/} See *NPRM* at ¶ 38.

^{2/} Comments of The Wireless Communications Association International, Inc., CS Docket No. 98-120, at 3-5 (filed Oct. 13, 1998).

for carriage of their local broadcast affiliates.^{3/} But for the Commission's ban on exclusive retransmission consent agreements, the broadcasters would have little choice but to surrender exclusivity for their local broadcast programming upon demand by incumbent cable operators who control their economic destiny.

Furthermore, the possibility that incumbent cable operators might hold carriage of DTV signals hostage during retransmission consent negotiations only increases their leverage over local broadcast stations:

Cable operators remain vertically integrated and are becoming more horizontally integrated. They control the gateway to almost 70% of American television households and increasingly make significant inroads into local advertising markets. As a result of all these factors, they have strong incentives to exclude or disadvantage local television signals that compete for advertising, particularly when these signals might be of higher technical quality.^{4/}

Simply stated, the record before the Commission demonstrates that there is a substantial risk that broadcasters will surrender exclusivity for their local broadcast programming if permitted to do so under the Commission's Rules, and thus it is imperative that the Commission retain its ban on exclusive retransmission consent agreements in its entirety.

WCA's position has been reinforced by the comments filed in this proceeding by certain broadcaster-owned cable programming services and by the broadcasters themselves. For example, Home & Garden Television, a cable network recently launched by The E.W. Scripps Company, has stated that it "has been forced to trade [Scripps'] retransmission

^{3/} *Id.* at 5-7.

^{4/} Comments of the Association of Maximum Service Television, Inc., CS Docket No. 98-120, at 16 (filed Oct. 13, 1998).

consent rights in exchange for carriage.”^{5/} In fact, as in the above-described cases of NBC, Fox and CBS, Scripps also has been forced to surrender exclusivity for Home & Garden Television as a *quid pro quo* for cable carriage of the various Scripps television stations.^{6/} In a similar vein, the broadcasters repeatedly argue that cable’s stranglehold over local distribution gives incumbent cable operators enormous leverage during retransmission consent negotiations, and thus requires that the Commission adopt must-carry rules for DTV stations.^{7/} The broadcasters’ comments reaffirm that incumbent cable operators have both the ability and the incentive to dictate terms of carriage to local television stations, and that the Commission must take prophylactic measures to ensure that cable’s exercise of its market power does not run roughshod over cable’s competitors. For the reasons set forth in WCA’s initial

^{5/} Comments of Home & Garden Television and Television Food Network, CS Docket No. 98-120, Summary at i (filed Oct. 13, 1998).

^{6/} The Commission has acknowledged that Home & Garden Television is a cable-exclusive service. Letter from Chairman William E. Kennard to the Honorable W.L. (Billy) Tauzin, Responses to Questions at 1 (Jan. 23, 1998).

^{7/} See, e.g., Comments of The Named State Broadcasters Associations, CS Docket No. 98-120, at 6 (filed Oct. 13, 1998) (“Only by requiring that the cable systems, which have a bottleneck on the access to two-thirds of American television households, carry these signals will the service be able to develop”); Comments of Granite Broadcasting Corporation, CS Docket No. 98-120, at 4 (filed Oct. 13, 1998) (stating that “[c]able operators . . . have come to serve as a ‘bottleneck or ‘gatekeeper’,” and that “cable operators will have an even greater gatekeeper role in the transition to digital television”); Comments of Entravision Holdings, LLC, CS Docket No. 98-120, at 4-5 (filed Oct. 13, 1998) (local cable operators often “possess a local monopoly over cable households,” and thus exercise “control over most (if not all) of the television programming that is channeled into the subscriber’s home); Comments of the Consumer Electronics Manufacturers Association, CS Docket No. 98-120, at 12 (filed Oct. 13, 1998) (“Cable’s use of its “gatekeeper” position to limit access to high definition signals would result in consumer confusion and remove incentives for a rapid transition”).

comments, those measures at a minimum must include retention of the Commission's current ban on exclusive retransmission consent agreements.

WHEREFORE, for the reasons set forth above and in WCA's initial comments, WCA requests that the Commission retain its ban on exclusive retransmission consent agreements and clarify that its enforcement of the ban will encompass cases of *de facto* as well as *de jure* exclusivity.

Respectfully submitted,

THE WIRELESS COMMUNICATIONS
ASSOCIATION INTERNATIONAL, INC.

By:

A handwritten signature in black ink, appearing to be "Paul J. Sinderbrand", written over a horizontal line.

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